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REPLY TO MONTCLAIR OFFICE

SUPPLEMENTAL SENTENCING SUBMISSION

November 1, 2018

Via ECF

Hon P. Kevin Castel, U.S.D.J.
Moynihan United States Courthouse
500 Pearl Street
New York, N.Y. 10007

Re: *United States v. Francisco Ochoa-Joaquin*,
S4 17-Cr.-00713 (PKC)

Dear Judge Castel:

Mr. Ochoa-Joaquin is scheduled to be sentenced tomorrow afternoon at 1:30. Having spent time reviewing and preparing for this important event, I write, respectfully, to place in context an issue raised both in the Pre-Sentence Report (“PSR”) and in the Government’s sentencing submission, which was filed on October 27, 2018. (ECF Doc. 146.) The issue is the circumstance that Mr. Ochoa-Joaquin, at counsel’s advice, initially declined to meet with the Government to discuss the circumstances of how he came to be involved in the offense. (US Sentence Memo at 3; PSR at ¶21.)

When Mr. Ochoa-Joaquin and co-defendants were arrested, there was a discussion among defense counsel as to whether the Government would ever credit any of the defendant’s version of events to the extent it involved claims of duress/necessity. Relatively early on in the process, one defendant did agree to proffer his version of events. His counsel reported back to the larger group of defense counsel that the Government’s response was hostile, incredulous and evinced an attitude that the Government was never going to be in a position of jeopardizing its case by accepting such a claim. Under the circumstances, undersigned counsel declined the offer to meet with the Government. There was also a concern that any meeting with the Government could be potentially risky

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to loved ones at home. Notably, Mr. Ochoa-Joaquin's wife had received threatening phone calls after his arrest. This is in addition to the fact that Mr. Ochoa-Joaquin's mentor in the marine mechanic trade had been murdered by narco-traffickers.

The issue did not end there, however. In the course of discussions with the Government of a plea to a lesser offense, his counsel discussed the option of bringing Mr. Ochoa-Joaquin to a meeting where the entire story of his involvement would be presented as relevant to the Government's position on sentencing. In a phone conversation, A.U.S.A Jane Kim advised counsel that such a meeting would not be of benefit to Mr. Ochoa-Joaquin since the Government was not in a position to credit any of claims of duress. That conversation occurred on or about February 22, 2018.

No criticism is intended of Ms. Kim, who has been unfailingly responsive and straightforward with counsel throughout this case. It remains counsel's position that there is an element of duress, direct and implied, involved in this case. This supplemental commentary is offered simply by way of context. The issue would not have been raised at all had it not been included in the PSR and US Sentencing Memorandum.

Overall, it remains the case that this is a good man, a much-loved husband and father, with a valuable trade and potentially bright future. He can return to his native country, Mexico, and resume a law-abiding life. There is not the slightest suggestion that he has ever previously violated the law or that he would again if sentenced to time-served and deported home. The sentence proposed by counsel is sufficient.

Your Honor's attention to this supplemental submission is appreciated.

Respectfully,
/s/ David A. Ruhnke
David A. Ruhnke
Counsel to Mr. Ochoa-Joaquin

Cc: Via ECF
Jane Kim, A.U.S.A.